

## How Can Employers Minimize the Effect of the Influenza/H1N1 on the Workplace?

**For more information regarding this or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.**

With flu season upon us and growing concern about the H1N1 virus, employers should take steps to alleviate the spread of the virus among their employees and to prepare for the possibility of an influenza outbreak. The Centers for Disease Control and Prevention (CDC) anticipate that more people and communities will be affected by the H1N1 virus during the fall and winter season. (For more information about influenza and H1N1 visit [www.flu.gov](http://www.flu.gov).) Consequently, employers should be proactive when it comes to thinking through some of the issues that may arise.

Of course, there are numerous legal issues to consider when thinking about how to address employee health. The ADA, the ADAAA, and applicable regulations and guidance present difficult burdens for employers trying to maintain a healthy workplace and allay possible employee worries, whether reasonable or not. Generally speaking, some efforts that employers may undertake to keep the workplace healthy, e.g., questioning employees about their health or sending home employees who appear with certain flu-like symptoms, may constitute unlawful medical inquiries or may be evidence that the employer “regards” the employee as being disabled.

In an effort to provide further guidance, the Equal Employment Opportunity Commission (EEOC) issued guidelines

on October 9, 2009, titled “Pandemic Preparedness in the Workplace and the Americans with Disabilities Act.” (The full text of these guidelines can be found at [www.eeoc.gov/facts/pandemic\\_flu.html](http://www.eeoc.gov/facts/pandemic_flu.html).) The guidelines provide employers with a detailed discussion of pre-pandemic and pandemic planning and also provide ideas about how to implement lawful influenza protection programs.

For example, these EEOC Guidelines, in conjunction with other CDC and EEOC publications, provide ideas on how and when to:

- Liberalize sick leave policies
- Create a system for dealing with employees exhibiting flu-like symptoms
- Cross-train employees
- Increase permitted use of flex time
- Enlarge telecommuting opportunities
- Educate employees about hygiene

To lessen the impact of the H1N1 virus and/or influenza on the workplace (or simply employee fears about these illnesses), proactive employers should re-examine their policies and practices, such as those above, to determine whether changes should be made. Employers should carefully analyze possible consequences when considering policy changes.

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